

REMARKS

Claims 12, 22-28, 30 and 32 are currently pending in the present Application, with claims 13-21, 29 and 31-32 withdrawn pursuant to the Requirement mailed July 8, 2003, and claim 32 reinstated in the April 13, 2004 Final Office Action. The Applicants wish to express their gratitude for the courtesies extended during the Examiner Interview conducted on July 22, 2004. The foregoing amendments and following remarks are consistent with the discussions and agreements reached in the Interview.

Objection to Specification Amendment: The specification amendment presented in the January 14, 2004 Amendment stands objected to as introducing new matter into the disclosure. The Applicants respectfully request this objection be withdrawn on the grounds that this amendment restates, essentially verbatim, language originally present in the application.

The added language regarding the gear selection device rest position and automatic return duplicates the language found in specification ¶ [0017]. In addition, similar language was included in original claim 11, and because the original claims are part of the original disclosure, amendment of the specification to set forth matter recited in the claims is permitted. *See* MPEP 608.01(I); 2163.06.III (“The claims as filed in the original specification are part of the disclosure and therefore, if an application as originally filed contains a claim disclosing material not disclosed in the remainder of the specification, the applicant may amend the specification to include the claimed subject matter.”),

In view of the foregoing, withdrawal of the pending objection to the

January 14, 2004 specification amendment is respectfully requested.

Rejections Under § 102(b): The Applicants respectfully traverse the rejections of claims 12, 22, 24 and 26 as anticipated under 35 U.S.C. § 102(b) by U.S. Patent No. 6,029,511 to Welsch, *et al.* ("Welsch") on the grounds that this reference fails to disclose all the features of the present invention recited in these claims.

The present invention is directed to a device for increasing vehicle security for vehicles equipped with automatic transmissions, wherein, when sensors and a control unit determine an accident or swerving event is occurring, an electronic transmission control is caused to interrupt a positive engagement of the automatic transmission. *See, e.g.*, Claims 12, 28, Specification ¶¶ [0012]-[0016] (transmission shifted into neutral to take power away from the drive wheels, or into park so that further vehicle rolling after a rollover accident is prevented). For clarity, the Applicants have amended independent claims 12 and 28 to recite that engagement is interrupted "by shifting the automatic transmission into a neutral position." Claims 23 and 32 accordingly have been canceled without prejudice, and the dependency of claim 25 changed from claim 23 to claim 12.

In contrast to the present invention, Welsch discloses a drive train in which a friction clutch is disengaged to prevent wheel slippage (*i.e.*, to prevent drive wheels and non-drive wheels from rotating at different speeds) during vehicle deceleration. Welsch thus discloses interrupting power by disengaging a clutch, rather than shifting an automatic transmission into a neutral gear position to interrupt drive power. In fact, Welsch does not teach any aspect of

control of an automatic transmission. While the pending Office Action concludes that Welsch addresses automatic transmissions due to a passing reference to a clutch 8 for a vehicle “without a clutch pedal” (April 13, 2004 Office Action at 3), one of ordinary skill in the art would recognize that Welsch is directed to a so-called semi-automatic *manual* transmission equipped with a friction clutch between the engine and transmission which is automatically disengaged each time the operator manual selects another gear of the manual transmission. *See, e.g.,* Welsch at 1:23-25 (describing a conventional manual transmission drive train with a clutch disposed between an engine and a transmission; no discussion anywhere in Welsch to an automatic transmission torque converter); at 1:35-40 (reference to excessive engine braking during deceleration potentially causing wheel slip, a characteristic of the locked-engagement of friction clutches, not of a fluid-coupled automatic transmission torque converter).

Because Welsch fails to disclose either shifting of an automatic transmission into a neutral gear to interrupt power, or any aspect of automatic transmission operation or control, this reference does not anticipate the present invention under § 102(b). Accordingly, the Applicants respectfully request the pending § 102(b) rejection be withdrawn.

Rejection Under § 103 (a): The Applicants respectfully traverse the pending rejection of claims 28 and 30 as unpatentable over Welsch in view of U.S. Patent No. 6,695,747 B2 to Zimmermann, *et al.* (“Zimmermann”) on the grounds that Zimmermann is not an effective reference against the present Application under § 103(a).

The present Application was filed in the U.S. on September 19, 2001, with receipt of all required materials for entry into under the U.S. National Phase on May 1, 2002. Under 35 U.S.C. § 363, the present Application has the effect of a U.S. national application for patent filed on the international filing date of its international application. International Application PCT/EP00/01766, to which priority is claimed under 35 U.S.C. § 119 in the Applicants' Declaration, was filed on March 1, 2000. Further, the international application was based on German applications filed March 19, 1999. Thus, the Applicants can establish an invention date at least as early as March 19, 1999.

The Zimmermann patent was granted on an application filed in the U.S. on November 2001, and published in the U.S. on September 12, 2002. Zimmermann's parent application international application was filed on May 25, 2000 and published, apparently only in German, on December 7, 2000. This international application was based on a German application filed on May 27, 1999 and published in German on November 30, 2000. The Applicants have not identified any publication of the German or international applications in English.

Because the present application was filed in Germany more than two months before the German parent of Zimmermann, § 102(a) (invention prior to foreign publication) is inapplicable,

Next, because Zimmermann was not published anywhere more than one year before the present Application's effective U.S. filing date of March 1, 2000, § 102(b) is inapplicable.

Finally, § 102(e)(2) is inapplicable because the Zimmerman patent was not applied for in the U.S. (November 27, 2001) prior to the Applicants' invention date in 1999. Moreover, even if there had been a qualifying international publication in English under Article 21(2), the German and WO publication dates in 2000 still fall after the Applicants' latest possible invention date in 1999.

Accordingly, because Zimmermann is not an effective reference under § 103 under any provision of § 102, the Applicants respectfully request the pending rejection of claims 28 and 30 be withdrawn.

CONCLUSION

In view of the foregoing amendments and remarks, the Applicant respectfully submits that upon entry of the foregoing amendments the Application will be in condition for allowance. Early and favorable consideration, and issuance of a Notice of Allowance for claims 12, 22, 24, 26, 28, 30 and 32 is respectfully requested.

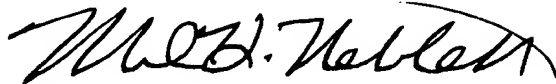
If there are any questions regarding this amendment or the application in general, a telephone call to the undersigned would be appreciated since this should expedite the prosecution of the application for all concerned.

If necessary to effect a timely response, this paper should be considered as a petition for an Extension of Time sufficient to effect a timely response, and please charge any deficiency in fees or credit any overpayments to Deposit

Account No. 05-1323 (Docket #951/50010US).

Respectfully submitted,

July 28, 2004

A handwritten signature in black ink, appearing to read "Mark H. Neblett", with a stylized flourish at the end.

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